Supreme Court of the United States.

Nos. 85 and 86.—October Term, 1905.

Russian-American Packing Company, Appellant, vs. The United States. } Appeal from the Court of Claims.

[December 18, 1905.]

This is an appeal from a judgment of the Court of Claims, rejecting a claim of the Russian-American Packing Company for the value of certain improvements erected by it on the island of Afognak, off the coast of Alaska. The Packing Company was incorporated in 1889, under the laws of California, for the purpose of carrying on the business of packing salmon on the island of Afognak; and for that purpose purchased and shipped materials for a cannery and buildings to be used in canning salmon, and also, without authority or license from the United States, took possession of a tract of about 159.52 acres of land, and erected thereon buildings, machinery, etc., at a cost of about $45,000. Prior to this time no one had been in possession of this tract. Claimants remained in possession for four years, and until December 24, 1892, and carried on a canning business at a profit of about $100,000, about $35,000 of which was subsequent to the passage of the act of March 3, 1891.

On April 1, 1892, claimant applied to the Surveyor General for a survey of the tract, under the act of 1891, and deposited in the Subtreasury at San Francisco $433.80, as the estimated cost of such survey. The survey was made, was approved March 15, 1893, and forwarded to the Commissioner of the General Land Office. Prior to December 24, 1892, the tract so occupied had not been reserved by the United States for fish culture, or any other purpose; nor had the same been purchased or applied for by any other person. On that day the President issued a proclamation declaring the whole island reserved for the purpose of establishing thereon a United States fish culture station, and warned all persons to depart therefrom. In July, 1893, claimant was informed of this proclamation by agents of the Government, and ordered to leave the island, which it did, and has not returned thereto. On January 15, 1895, the Commissioner of the General Land Office, in passing upon the survey transmitted to him, addressed a letter to the Surveyor General, calling attention to the President's proclamation, and rejected the survey on that ground, as well as upon the ground that the survey was not in square form, as required by statute. No appeal was taken from his decision.

The Court found as a conclusion of law that claimant was not entitled to recompense for the value of the improvements, nor for the loss of profits

arising from its removal from the island, but was entitled to recover the amount deposited for the expense of the survey.

Mr. Justice BROWN delivered the opinion of the Court.

It is well understood that the mere settlement upon public lands without taking some steps required by law to initiate the settler's right thereto, is wholly inoperative as against the United States. (*Lansdale* v. *Daniels*, 100 U. S. 113, 116; *Maddox* v. *Burnham*, 156 U. S. 544; *Northern Pacific R. R. Co.* v. *Colburn*, 164 U. S. 383.)

Petitioner, however, bases its right to recover upon certain statutes which, it is insisted, recognized the right of the petitioner to settle upon this island and make the improvements in question. The first of these is the act of May 17, 1884, "providing a civil government for Alaska," (23 Stat. 24,) wherein it was enacted by section 8 "that the Indians or other persons in said District shall not be disturbed in the possession of any lands actually in their use or their occupation, or *now* claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress."

It is quite clear that this section simply recognized the rights of such Indians or other persons as were in possession of lands at the time of the passage of the act, and reserved to them the power to acquire title thereto after future legislation had been enacted by Congress. As the petitioner did not take possession of this land until five years after the act of 1884 was passed, it was a mere trespasser and not in a position to avail itself of any contract which might be extorted from the language of the act in favor of the Indians or other persons who might have been in possession of the land at the passage of the act.

That this act was intended merely as a preliminary to future legislation and for the temporary protection of Indians and other settlers is made more manifest by section 12 of the same act:

"That the Secretary of the Interior shall select two of the officers to be appointed under this act, who, together with the Governor, shall constitute a commission to examine into and report upon the condition of the Indians residing in said Territory, what lands, if any, should be reserved for their use, what provision shall be made for their education, what rights by occupation of settlers should be recognized, and all other facts that may be necessary to enable Congress to determine what limitations or conditions should be imposed when the land laws of the United States shall be extended to said district."

So far from Congress intending by this act to invite a settlement upon public lands in Alaska, a contrary inference arises from a subsequent clause of section 8, that "nothing contained in this act shall be construed to put in force the general land laws of the United States."

We come now to the act of March 3, 1891, (26 Stat. 1100, section 12, of which provides:

"SEC. 12. That any citizen of the United States twenty-one years of age, and any association of such citizens, and any incorporation incorporated under the laws of the United States, or of any State or Territory of the United States, now authorized by law to hold lands in the Territories now or hereafter in possession of and occupying public lands in Alaska for the purpose of trade or manufactures, may purchase not exceeding one hundred and sixty acres, to be taken as near as practicable in a square form, of such land at two dollars and fifty cents per acre. . . ."

Section 13 provides for a survey, a deposit of the cost of such survey, a report to the Commissioner of the General Land Office, and an approval by him of the survey, and for the final issue of the patent. Section 14 of the act is important, and reads as follows:

"SEC. 14. That none of the provisions of the last two preceding sections of this act shall be so construed as to warrant the sale of any lands belonging to the United States . . . to which the natives of Alaska have prior rights by virtue of actual occupation, or which shall be selected by the United States Commissioner of Fish and Fisheries on the islands of Kadiak and Afognak for the purpose of establishing fish-culture stations, . . . and there shall be reserved in all patents issued under the provisions of the last two preceding sections the right of the United States to regulate the taking of salmon and to do all things necessary to protect and prevent the destruction of salmon in all the waters of the lands granted frequented by salmon."

Even if section 14 had not been enacted, it would not follow that petitioner, by sections 12 and 13, became entitled to a patent of the United States by procuring a survey of such lands. We have had occasion in several cases to hold that, although the occupation and cultivation of public lands with a view to pre-emption confers a preference over others in the purchase of such lands by the *bona fide* settler, which will enable him to protect his possession against other individuals, it does not confer a vested right as against the United States in the land so occupied. Such a vested right, under the pre-emption laws, is only obtained when the purchase money has been paid, and receipt from the proper land officer given to the purchaser. Until this has been done it is competent for Congress to withdraw the land from entry and sale, though this may defeat the inchoate right of the settler. (*Frisbie* v. *Whitney*, 9 Wall. 187.) When this payment is made, the other prerequisites having been complied with, the settler is then entitled to a certificate of entry from the local Land Office and ultimately to a patent. (*The Yosemite Valley Case*, 15 Wall. 77, 87; *Campbell* v. *Wade*, 132 U. S. 38; *Shiver* v. *United States*, 159 U. S. 491.)

The case of *Lytle* v. *Arkansas*, (9 How. 314,) is much relied upon by the petitioner, and is carefully criticised and distinguished by Mr. Justice Field in the Yosemite Valley case. In that case proofs were taken and

decided both by the Register and the Receiver of the Land Office to be sufficient, and the money was *paid* by the claimant, and received by the Commissioner; but through misconduct or neglect the Register refused afterward to permit claimant to enter the section, and it was held that the right of the pre-emptor thus acquired could not be impaired by a selection of land by a subsequent act of Congress. Commenting on this case Mr. Justice Field observed in the Yosemite Valley case (p. 93) that—

"The whole difficulty in the argument of defendant's counsel arises from his confounding the distinction made in all cases whenever necessary for their decision between the acquisition by the settler of a legal right to the land occupied by him as against the owner, the United States, and the acquisition by him of a legal right as against other parties to be preferred in its purchase when the United States have determined to sell. It seems to us little less than absurd to say that a settler, or any other person, by acquiring a right to be preferred in the purchase of property, providing a sale is made by the owner, thereby acquires the right to compel the owner to sell, or such an interest in the property as to deprive the owner of the power to control its disposition."

But if there were any doubt regarding the rights of the petitioner in connection with the above case, they are completely resolved by the language of section 14 of the act, which declares that the provisions of the preceding sections shall not be so construed as to warrant the sales of any lands belonging to the United States which shall be reserved for public purposes, or selected by the Commissioner of Fish and Fisheries on the islands of Kadiak and Afgonak, for the purposes of establishing a fish-culture station. As the President exercised the rights thus reserved, and declared the whole island appropriated for the purpose of establishing a fish-culture station, and warned all persons to depart therefrom, it is clear that the rights, if any, previously acquired by the settlement were terminated by the proclamation. Petitioner gained no additional consideration from the improvements put upon the land, since, if for no other reason, these were made prior to the act of 1891, when it was a mere trespasser and occupying the land without a shadow of title.

Affirmed.

No. 86.

Royal Packing Company
vs.
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} Appeal from the Court of Claims.

Per Curiam:

This case depends upon a similar state of facts, involves the same question of law, and is also

Affirmed.